IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2861 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANBHAI DESAIBHAI PATEL - Petitioner
Versus
RAMANBHAI HARMANBHAI & 6 - Respondents

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Appearance :
MR JITENDRA M PATEL for Petitioner : 1,
MR JAYRAJ CHAUHAN WITH MUKUND M DESAI for Respondents : 1 - 5.
MR CHHAYA AGP for Respondents : 6 - 7.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 07/02/2007

ORAL JUDGMENT

1. The short facts that arise are that the respondent No. 1 entered into the transaction with the petitioner for agreement to sale and

the possession of the said land was entrusted to the petitioner. The proceedings under Section 84-C under the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as 'the Act') were initiated on the ground that there is breach of provisions of Section 43 of the Act. On 4.3.1983, the Mamlatdar passed the order whereby, he observed that proceedings deserves to be dropped. Private respondents carried the matter in Appeal before the Deputy Collector and in Appeal, order of the Mamlatdar was set aside. The petitioner herein carried the matter in Revision before the Tribunal and the Tribunal, as per oder dated 11.4.1988, passed the following operative order:-

> *“The revision application is allowed. The Deputy Collector is required to initiated proceedings under Section 32R and exercise his powers under that Section in connection with the transaction in question and to pass proper order as required under Section 32R in accordance with law after giving the parties opportunity to lead evidence and to represent their case.”*

Thereafter, it appears that the Deputy Collector was pleased to initiate the proceedings. However, vide order dated 11.7.1988, the Deputy Collector found that there is breach of the provisions of Section 43 of the Act as well as Section 32R of the Act and therefore, he directed the Mamlatdar to initiate

proceedings under Section 84-C of the Act. The petitioner carried the matter in Revision before the Tribunal once again and on 28.11.1995, the Tribunal passed the order of partly allowing the revision and directed the matter to be remanded to the Deputy Collector for deciding the matter under Section 32R of the Act. It is under these circumstances, the present petition.

2. Heard Mr. Patel for the petitioner, Mr. Jayraj Chauhan with Mr. Desai for respondent Nos. 1 to 5 and Mr. Chhaya, learned AGP for respondent Nos. 6 and 7.

3. It has been contended on behalf of the petitioner that as the transaction in question was prior to the amendment under Section 84-C of the Act, the proceedings under Section 84-C of the Act cannot be maintained and therefore, it has been submitted that consequential proceedings under Section 32R also cannot be initiated against the petitioner or qua the land in question and therefore, the order of the Tribunal may be interfered with by this Court. Mr. Patel, learned counsel for the petitioner has relied upon the decision of this Court in case of **PATEL CHHOTABHAI SHANKERBHAI VS. PATEL SHANTABHAI NARSHIBHAI since decd. Through his heirs (Minor Patel Prakashbhai Shantabhai AND ANOTHER)** reported in 1975 GLR p.247 for canvasing the proposition raised on behalf of the petitioner. If the aforesaid contention

raised on behalf of the petitioner is examined, it appears that as recorded hereinabove, the Tribunal in earlier proceedings of the Revision Application No. 565 of 1984 vide order dated 11.4.1988 after taking into consideration the said decision upon which the reliance is now placed by Mr. Patel and also in view of subsequent decision of this Court in case of **PUNAMBHAI DHEDUBHA BARAIYA VS. PATEL CHHAGANBHAI PARSHOTAMDAS & ANR.,** reported in 24(2) GLR p.1165 had found that as per the subsequent view of this Court in the decision reported in 24(2) GLR p.1165, it is permissible to initiate proceedings under Section 32R of the Act and therefore, while allowing revision, the direction was given by the Tribunal for initiation of the proceedings under Section 32R of the Act.

4. It is not in dispute that the petitioner has not challenged the said order of the Tribunal before higher forum and has accepted the said order. Not only that, thereafter, the proceedings came to be initiated by the Deputy Collector under Section 32R of the Act and since the Deputy Collector also found the breach of provisions of Section 43 of the Act in addition to the provisions of Section 32R of the Act but whether there was any justifiable reason for not cultivating the land was not examined, therefore the Tribunal by partly allowing the revision has set aside the observations made by Deputy Collector qua breach of provision of Section 43

of the Act but has remanded the matter for proceedings under Section 32R of the Act. Once the earlier order of the Tribunal dated 11.4.1988 was accepted by the petitioner, it is not open to the petitioner now to contend that the proceedings under Section 32R of the Act cannot be maintained against the petitioner on the ground of alleged non-cultivation of the land by the holder and cultivation of the land by the petitioner. If such a contention is allowed to be raised, the sanctity of the order passed by the Tribunal, which had become final would stand disturbed. Further, the petitioner, who has accepted the order and also acted upon the order, cannot be permitted to indirectly challenge the same view, which was earlier taken and concluded by the decision of the Tribunal as per order dated 11.4.1988. Therefore, the said contention raised by the petitioner deserve to be rejected.

5. The reliance upon the decision in case of Patel Chhotabhai Shankerbhai (Supra) is ill-founded because the very decision is subsequently considered by this Court in case of Punabhai Dhedubhai Bariya (Supra), which was relied upon by the Tribunal at the time when the earlier order was passed in the year 1988. Therefore, the said decision is now of no help to the petitioner.

6. In view of the above, it cannot be said that the Tribunal has committed any jurisdictional error

nor it can be said that the exercise of the discretion by the Tribunal is perverse, which may call for interference by this Court under Article 227 of the Constitution.

7. In the result, the petition fails. Hence the same is dismissed. Rule is discharged. Interim relief vacated. Considering the facts and circumstances of the case, there shall be no order as to costs.

(Jayant Patel, J.)

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